

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

CAUSE NO. 490100104CP000671

STATE OF INDIANA,)

Plaintiff,)

v.)

NO LIMIT CONSTRUCTION, INC.,)
and HARVEY W. FRANCIS IV,)

Defendants.)

FILED

APR 27 2001

Jack M. Taylor
CLERK OF THE
MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION AND COSTS

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. Defendant No Limit Construction, Inc., is an Indiana corporation engaged in business as a home improvement contractor, with a principal place of business at 2811 Brouse Avenue, Indianapolis, Indiana.

3. Defendant Harvey W. Francis IV is the president of No Limit Construction, Inc., and is authorized to enter into contracts on behalf of No Limit Construction, Inc.

FACTS

4. Since at least April 29, 1999, Defendants have entered into home improvement contracts with Indiana consumers.
5. On May 3, 1999, Defendants entered into a contract with Marcia McElroy ("McElroy") of Indianapolis, Indiana, wherein Defendants agreed to perform concrete work, including pouring and finishing a driveway, at McElroy's home for a price of one thousand seventeen dollars and seventy cents (\$1,017.70). A true and correct copy of Defendants' contract with McElroy is attached and incorporated by reference as Exhibit "A."
6. Defendants failed to include the following information in the contract with McElroy:
 - a. Defendants' name and address;
 - b. The telephone numbers and names of any agent to whom consumer problems and inquiries could be directed;
 - c. A reasonably detailed description of the work to be performed under the contract;
 - d. A statement that specifications would be provided to Cunningham before commencing any work and that the contract was subject to Cunningham's separate written and dated approval of the specifications;
 - e. A legible printed or typed version of Defendant Francis' and McElroy's names directly after or below their signatures.

VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

7. The services described in paragraph 5 above are “home improvements” as defined by Ind. Code § 24-5-11-3.

8. The transaction referred to in paragraph 5 above is a “home improvement contract” as defined by Ind. Code § 24-5-11-4.

9. Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

10. By failing to provide McElroy with a completed home improvement contracts containing the information referred to in paragraph 6 above, Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

11. Defendants’ violations of the Indiana Home Improvement Contracts Act referred to in paragraph 10 constitute deceptive acts and subjects Defendants to the remedies and penalties under Ind. Code § 24-5-0.5.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants, No Limit Construction, Inc., and Harvey W. Francis IV, enjoining Defendants from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment; and

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

a. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

b. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By: Terry Tolliver
Terry Tolliver
Deputy Attorney General
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THIS AGREEMENT, made this 3rd day of May A.D. 19 99
by and between _____ hereinafter called the
Owner, and No Limit Construction, Inc. hereinafter called
the Contractor.

For the consideration hereinafter named, the said Owner covenants and agrees with said Contractor, as follows:

FIRST. The Contractor agrees to furnish all material and perform all work necessary to complete the _____
concrete work/ Take out and haul stone to the backyard, form, pour, and finish driveway.

for the above named structure, according to the plans and specifications (details thereof to be furnished as needed) of
Marsh F. McElroy Architect, and to the full satisfaction of said Architect or Owner.

SECOND. The Contractor agrees to promptly begin said work as soon as notified by said Architect or Owner, and to complete the work as follows: _____
The same day. / 5/3/99

THIRD. The Contractor shall take out and pay for Workmen's Compensation and Public Liability Insurance, also Property Damage and all other necessary insurance, as required by the Owner, Architect or by the State in which this work is performed.

FOURTH. The Contractor shall pay all Sales Taxes, Old Age Benefit and Unemployment Compensation Taxes upon the material and labor furnished under this contract, as required by the United States Government and the State in which this work is performed.

FIFTH. No extra work or changes under this contract will be recognized or paid for, unless agreed to in writing before the work is done or the changes made.

SIXTH. This contract shall not be assigned by the Contractor without first obtaining permission in writing from the Architect or Owner. All Sub-contracts shall be subject to the approval of the Architect or Owner.

IN CONSIDERATION WHEREOF, the said Owner agrees that he will pay to the said Contractor, \$1,017.70
for said materials and work, said amount to be paid as follows: CHECK.

\$1,017.70

5-4-99 PAID IN FULL
Harvey W Francis Jr

The contractor and the Owner for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of this agreement.

Witnesses:

Michael M Bueland

Marina F. McElroy 5/3/99
Owner.

Harvey W Francis Jr
Contractor.